

**AMENDMENT NO. 1 TO THE
AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND
THE SAN LUIS OBISPO COUNTY COMMUNITY FOUNDATION, INC.**

This Amendment No. 1, effective on execution, is to the Agreement Between the County of San Luis Obispo and the San Luis Obispo County Community Foundation, Inc. dated January 27, 2004, ("Feed the Hungry Agreement" or "Agreement") by and between San Luis Obispo County ("County"), and the San Luis Obispo County Community Foundation, Inc., a California nonprofit corporation, ("Foundation").

RECITALS

WHEREAS, on January 27, 2004, the County of San Luis Obispo Board of Supervisors ("Board") entered into an Agreement with the Foundation establishing and providing for the Foundation's management of the Feed the Hungry Endowment Fund ("Fund"); and

WHEREAS, on February 3, 2004, \$500,000 was transferred to the Foundation from the County to establish the Fund in order to carry out the purpose of the Fund; and

WHEREAS, the primary stated purpose of the Fund, as originally set forth in the Feed the Hungry Agreement, was to provide for grants to the Food Bank Coalition of San Luis Obispo County ("Coalition") in support of programs that provide food or other services that reduce hunger for those in need in the County; and

WHEREAS, at the time the Board established the Fund, the Board hoped that the Fund would provide a perpetual charitable endowment through the Foundation to provide a means to feed the hungry in San Luis Obispo County through annual distributions; and

WHEREAS, the needs of the hungry have grown substantially since the establishment of the Fund such that the desire that the County and the original intent of the Feed the Hungry Agreement to provide for and establish a perpetual means to feed the hungry is, in the County's and Coalition's opinion, outweighed by the need to reduce hunger in San Luis Obispo County; and

WHEREAS, the existing Feed the Hungry Agreement contains provisions that conflict and/or make it difficult for the Foundation and County to agree on best course of action related to management of the Fund in light of the Foundation's general policies and procedures relating to management of endowments and other funds under its control; and

WHEREAS, the County now wishes to clarify and modify the provisions of the Agreement as it pertains to conflicting terms and the distribution and management cost of the Fund; and

WHEREAS, the Coalition, the beneficiary of the Fund, agrees that the Feed the Hungry Agreement requires clarification and amendments to meet the needs of its beneficiaries and agrees to acknowledge these amendments, although it is not a party to the Feed the Hungry Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to this Amendment No. 1 to the Feed the Hungry Agreement as follows:

A. Paragraph 2, **PURPOSE**, is *deleted* in its entirety and replaced with the following paragraph:

2. **PURPOSE**: The primary purpose of the Fund, as acknowledged by the County, Foundation and Coalition shall be to make grants on an annual basis to the Food Bank Coalition of San Luis Obispo County in order to support programs that provide food or other services, with a goal of reducing the number of those in need in San Luis Obispo County. The grants shall be made annually as set forth in this Feed the Hungry Agreement with the express understanding that annual grants are inconsistent with a perpetual endowment and will result in the eventual exhaustion of the Fund without significant additional contributions to the Fund on an ongoing basis.”

B. Paragraph 4, **GRANT**, is *deleted* in its entirety and replaced with the following paragraph:

4. **GRANT**: The County transferred to the Foundation, as a grant of County funds, the original amount of five hundred thousand dollars (\$500,000) to establish the Fund. Subject to the right of the Foundation to reject or redirect any particular gift, additional County funds or donations can be made into the Fund. The Foundation reserves the right to establish a parallel fund through which any person, whether an individual, corporation, trust, estate, or organization (“Donor”), may make gifts to the Foundation for the benefit of Food Bank Coalition or other organization providing similar services by transfer of property acceptable to the Foundation in whole or in part. All gifts, bequests and devises to the parallel fund shall be irrevocable once accepted by the Foundation, held separate from the Fund, and managed based on Foundation’s policies and procedures and not subject to this Agreement. The Foundation reserves the right to account for and retain parallel funds irrevocably dedicated to the Foundation by third parties separately from funds granted by the County, unless the third part Donor specifically conditions the gift to be allocated to the Fund and not the parallel fund. If the County Board demands the return of the Fund proceeds to the County, the contributions in the parallel fund shall not be included and shall be retained under continued management by the Foundation under its own policies and procedures.”

C. Paragraph 5, **DISTRIBUTION**, subparagraph A, shall be corrected to reference paragraph 13 in the first sentence instead of paragraph 12; and subparagraphs C and D are *deleted* in their entirety and replaced with the following paragraph:

- C: Distributions from the fund will be made on an annual basis in the amount of \$20,000 or 5% of the fair market value of the Fund whichever is greater. The parties agree and understand that this distribution method will ultimately exhaust the Fund and eliminate its “perpetual” purpose as originally desired by the Board of Supervisors, and such distribution policy has been approved by the County and the Coalition Board. Further, the County agrees to indemnify and hold harmless the Foundation from claims made by any third party relating to the change in investment and distribution policies as established by this Agreement.”

D. Paragraph 8, **CONTINUITY**, is *deleted* in its entirety and replaced with the following paragraph:

8. **CONTINUITY**: The Fund shall continue so long as assets are available in the Fund and its purposes can be fulfilled. If the Fund is terminated for any reason, the Foundation shall offer the remaining balance of the Fund to the County for management, or the Foundation shall direct an alternative purpose within the Foundation for use of the Fund’s proceeds, provided such use is exclusively for charitable or other exempt purposes that:
- a) are within the scope of charitable or other exempt purpose of the Foundation’s Articles of Incorporation; and
 - b) most nearly approximate, in the good faith opinion of the Board of Directors of the Foundation, the original purpose of the Fund; and
 - c) are in accordance with the public benefit purpose and the grant criteria as set out in Section 5 hereof.

If the Fund balance is dedicated to another Fund or purpose within the Foundation, the Feed the Hungry Agreement shall terminate and the balance shall be managed according to the Foundation’s policies and procedures in effect at such time.”

E. Paragraph 11, **INVESTMENT OF FUNDS**, is *deleted* in its entirety and replaced with the following paragraph:

11. **INVESTMENT OF FUNDS**: The County and Coalition acknowledge that this Amendment and the management directives herein are inconsistent with the Foundation’s Investment and Management Policies. Only to the extent not inconsistent with the terms hereof, the Foundation shall have all the powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest and reinvest the Fund pursuant to the Foundation’s Investment Policy, as it exists from time to time, and the power to comingle the

assets of the Fund with those of other funds for investment purposes. However, all accounting of the Fund will be consistent with paragraph 10 hereof.”

F. Paragraph 13, **COSTS OF THE FUND**, is hereby *amended* to add the following language:

13. **COSTS OF THE FUND**: An annual fee of no more than 1% of the fair market value of the Fund shall be charged and collected from the Fund, to be collected on a quarterly basis, for the Foundation to cover a portion of its costs to administer the Fund pursuant to this Agreement. As a concession, the Foundation is agreeing not to pass through costs above the 1% annual fee, including the third party management fees charged the Foundation on the Fund balance (currently charged at a rate of .7%), which fees the Foundation pays for all funds under management.

The Foundation agrees that upon execution of this Amendment No. 1, the Foundation shall pay to the Food Bank the sum of \$26,464.45, representing a refund of Investment Management Fees charged from the inception of the Agreement. This one time payment shall be made from Foundation assets, not from the assets of the Fund. The County agrees that payment of such amount to the Food Bank constitutes a full resolution and release of claims the County has regarding the amount of fees charged by the Foundation to manage the Fund since its inception. Further, in acknowledgement of this refund, the Coalition, through its acknowledgement below, agrees to identify the Foundation as a partner agency with the Coalition in all advertisements or statements where sponsors are generally acknowledged. Such identification would be for general acknowledgements only, and would not pertain to events sponsored by specific organizations”

G. A new paragraph 27 is hereby added to the Agreement to provide as follows:

27. **DISPUTE RESOLUTION**: The parties agree that if a disagreement in the interpretation of this Agreement occurs, they will endeavor first to resolve the dispute at the administrative level. If either party wishes to terminate this Agreement, the parties agree the terminating party shall first provide written notice of the intent to terminate, providing sufficient details to allow the non-termination party to evaluate the concerns of the terminating party. Thereafter the parties agree to try in good faith to settle the dispute through mediation conducted by a mediator to be mutually selected, with each party bearing one half of the mediator’s costs. The termination of this Agreement may only be made by the Board of the terminating party and only after the parties have first mediated the dispute and are otherwise not able to resolve their concerns.”

H. All provisions of the Agreement not affected by this Amendment No. 1 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Feed the Hungry Endowment Agreement dated January 27, 2004, as set forth below.

SAN LUIS OBISPO COUNTY COMMUNITY FOUNDATION

By: Dee Lacey
Dee Lacey, President

By: Barry VanderKelen
Barry VanderKelen, Executive Director

Date: 11/7/11

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson, Board of Supervisors

Date: _____

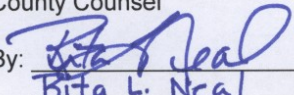
ATTEST

By _____
Clerk of the Board of Supervisors

Approved as to Form and Legal Effect:

WARREN R. JENSEN

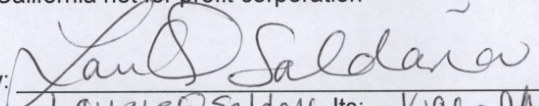
County Counsel

By: 
Rita L. Neal, Assistant County Counsel

DATED: 11/9/2011

The undersigned acknowledges the contents of this agreement as it relates to representations made herein on behalf the Food Bank Coalition of San Luis Obispo County.

Food Bank Coalition of San Luis Obispo County,
a California not for profit corporation

By: 
Lauree Q. Saldana, Its: Vice-Chair

Date: November 9, 2011